



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 9967901

Date: NOV. 27, 2020

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an oral and maxillofacial surgeon, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
  - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

<sup>2</sup> See also Poursina v. USCIS, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding her claim of eligibility under Dhanasar's first prong, the Petitioner indicated that she intends to work as an "academic surgeon" and "to serve in the role of a teacher/trainer, mentor to the oral and maxillofacial surgery residents at University [REDACTED]" She further stated:

[The Petitioner] has been offered employment by the Department of Surgery of the University of [REDACTED] which serves as the faculty practice plan (FPP) for the University of [REDACTED] College of Medicine (COM). She is appointed to a three-year term and is expected to devote her time to:

Clinical and Clinical Teaching: 92.5%

Research: 0%

Education: 7.5%

Administration: 0%

Total: 100%

The Petitioner provided a January 2019 letter from [REDACTED] offering her a position in the Department of Surgery and explaining that she "will also be recommended for a COM faculty appointment as an Instructor of Clinical . . ."<sup>4</sup> The record also includes a [REDACTED] Employment Agreement" indicating that the Petitioner "accepts employment to perform medical services as directed by [REDACTED] and undertaken by [REDACTED] for individual patients and otherwise at the University [REDACTED] Hospital and/or such other [REDACTED] area hospitals or locations as may be directed by [REDACTED] . . ." We agree with the Director that the Petitioner's proposed work as an academic surgeon has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking

<sup>3</sup> See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about this position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the Dhanasar analytical framework.

may have national importance for example, because it has national or even global implications within a particular field.” Id. We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” Id. at 890.

The record contains letters of support discussing the shortage of dentists in the [REDACTED] area and throughout the United States, and the underrepresentation of females in the profession of oral and maxillofacial surgery.<sup>5</sup> For example, [REDACTED] associate professor at [REDACTED] indicated that [REDACTED] is located in “a dental health shortage area” and that “oral and maxillofacial surgery at [REDACTED] is the only facility available for the entire population of over 2 million underserved individuals in the Tri-State area surrounding [REDACTED] to seek tertiary dental care.” He further noted that [REDACTED] selected the Petitioner “in an effort to continue diversifying our faculty. In the male-dominated specialty of oral and maxillofacial surgery, having a female teacher is our way of leading from the front – setting an example of leadership to encourage more women to pursue oral maxillofacial surgery.”

Likewise, [REDACTED] clinical associate professor at University [REDACTED] asserted that the profession of oral and maxillofacial surgery “has a paucity of female residents and in turn educators.” [REDACTED] further stated: “This has been recognized at a national level as somewhat of a crisis – namely because we are a dental specialty. When we look at dental school statistics, almost half of all dental students are females and yet we are not able to recruit them . . . . Female faculty academic mentors are critical to our future.” Similarly, [REDACTED] assistant professor at University of [REDACTED] indicated that her profession has been ineffective in “attracting female candidates. Females represent approximately 12-15% of all residents as well as faculty. This is a sharp contrast to the male-to-female ratio of dental students 49-51%.” Moreover, [REDACTED] professor at University [REDACTED] noted that “there are relatively few women in academic oral maxillofacial medicine.”

The record also includes information from the Health Resources and Services Administration indicating that [REDACTED] and other parts of [REDACTED] are designated as a Health Professional Shortage Area with respect to dental care. Additionally, the Petitioner submitted information about the [REDACTED] Free Dental Care clinic and an article, entitled [REDACTED]

[REDACTED] This article indicated that female residents reported “a significantly poorer career and job satisfaction than male residents.”

In her appeal brief, the Petitioner discusses her academic credentials, specialized training, surgical internships, and professional experience. The Petitioner’s claims regarding her education, medical skills, and oral and maxillofacial surgery experience relate to the second prong of the Dhanasar framework, which “shifts the focus from the proposed endeavor to the foreign national.” Id. at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under Dhanasar’s first prong.

Furthermore, the Petitioner asserts that her proposed endeavor has national importance due to the shortage of dentists in the [REDACTED] area as well as nationally. This shortage of dentists in [REDACTED] and the United States is not sufficient to demonstrate the national importance of any particular clinical

<sup>5</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

or teaching work proposed by the Petitioner.<sup>6</sup> A shortage of qualified professionals alone does not render the work of an individual academic surgeon nationally important under the Dhanasar precedent decision.

In addition, the Petitioner contends that “the shortage will only be addressed by attracting more people into the profession – like women who are sorely under-represented in oral and maxillofacial surgery.” She argues that “to increase the number of oral and maxillofacial surgeons, the profession must be able to provide female role models in academia who can also serve as mentors.” The Petitioner further states: “This is a national problem that can be addressed by more female oral and maxillofacial surgeons in academia. [The Petitioner] will have an impact across the field simply by virtue of being one of the few female oral and maxillofacial surgeons in academia.” The record, however, does not include evidence to corroborate the Petitioner’s claim that her undertaking stands to “have an impact across the field.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. While the Petitioner’s proposed surgical and teaching duties at [redacted] have substantial merit, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In Dhanasar we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s clinical and educational work stands to sufficiently extend beyond her dental patients and medical trainees to impact academia or the field of oral and maxillofacial surgery more broadly at a level commensurate with national importance. Accordingly, the Petitioner’s proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

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<sup>6</sup> The U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. A determination as to whether the benefits inherent in the labor certification process are outweighed by other factors favorable to the Petitioner relates to the balancing analysis set forth under the third prong of the Dhanasar framework.